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REMARKS

Claims 1-62 are pending in the present application. Reconsideration is respectfully requested for the following reasons. The finality of the election is noted by the Applicant. Applicant notes that Applicant has petitioned for withdrawal of the restriction, in case such information may be helpful to the Examiner.

The Examiner has indicated that the Information Disclosure Statement filed June 2, 2002 has been received and the references listed therein have been considered. Applicant would like to thank the Examiner for that notification.

Fig. 1 has been objected to because it is not clear as to whether the center vertically-extending structure between structures 56a and 56b is also a support. The Examiner suggested that numeral 56c along with a lead line should be added to indicate the central support for clarity. Applicant respectfully submits a marked-up copy of Fig. 1 showing the numeral 56c added in red ink for the Examiner's review. Applicant has also added a sentence on page 7 of the specification to refer to the front middle upper support 56c.

The abstract has been objected to for containing more than 150 words. Applicants would like to thank the Examiner for that notification. A new abstract having 150 words is submitted for the Examiner's review. Applicant respectfully requests notification by the Examiner that the new abstract is in proper language and format.

The specification has been objected to for containing several informalities. Applicant would like to thank the Examiner for pointing out the inaccuracies in the specification and has adopted most of the Examiner's suggestions. However, on line 27 of page 11, Applicant submits that the word "be" is proper and that deleting the word "be" will result in a sentence that ends with the phrase "will still pushed upward." Applicant submits that this sentence with such a modification would be improper. Accordingly, Applicant submits that this sentence was proper as originally submitted.

Claims 1, 3-6, 14-22, 31-34, 41-44, 46-54 and 57-62 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. First, the Examiner has rejected claims 3, 19, 41 and 51 for including the phrase "the pressure" which

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lacks positive antecedent basis. Applicant has adopted the Examiner's suggestion and deleted "the" from this phrase in each of these claims. Second, the Examiner has stated that the phrase "and divided" in the last sentence of claims 18, 50 and 62 renders the claims vague and indefinite since sufficient structure has not been set forth to perform such a function. Accordingly, Applicant has deleted this phrase from claims 18, 50 and 62. Third, the Examiner has rejected claim 62 because the word "dough" appears to be inaccurate and that the word "food" should be used in place of the word "dough." Applicant has adopted the Examiner's suggestion and has inserted the word "food" for the word "dough." Finally, the Examiner has rejected several functional phrases as being vague and indefinite. As discussed directly below, Applicant respectfully traverses this rejection.

In the Office Action, the Examiner has rejected all of the claims for including a phrase that begins with "adapted," "configured," "automatically activates" or "automatically deactivates." Applicant respectfully submits that these rejected phrases are definite. According to Section 2173.01 of the M.P.E.P., "Applicant may use functional language, alternative expressions, negative limitations, or any style of expression or format of claim which makes clear the boundaries of the subject matter for which protection is sought." As noted by the Court in *In re Swinehart*, 160 U.S.P.Q. 226 (C.C.P.A. 1971), a claim may not be rejected solely because of the type of language used to define the subject matter for which patent protection is sought. *Id.* Examiners "should allow claims which define the patentable subject matter with a reasonable degree of particularity and distinctiveness." M.P.E.P. §2173.02. Additionally, "[s]ome latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the Examiner might desire." *Id.* According to §2173.02 of the M.P.E.P.:

Definiteness of claim language must be analyzed, not in a vacuum, but in light of:

- (A) the content of the particular application disclosure;
- (B) the teachings of the prior art; and
- (C) the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.

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Applicant finally notes that: "[b]readth of a claim is not to be equated with indefiniteness."
M.P.E.P. §2173.04. Applicant submits that the language rejected by the Examiner is broad,
but not indefinite as defined above.

Applicant submits that the language rejected by the Examiner is definite functional
language. According to §2173.05(g) of the M.P.E.P.:

A functional limitation is an attempt to define something by what it does,
rather than by what it is (e.g., as evidenced by its specific structure or
specific ingredients). There is nothing inherently wrong with defining
some part of an invention in functional terms. Functional language does
not, in and of itself, render a claim improper. *In re Swinehart*, 439 F.2d
210, 169 U.S.P.Q. 226 (C.C.P.A. 1971).

A functional limitation must be evaluated and considered, just like any
other limitation of the claim, for what it fairly conveys to a person of
ordinary skill in the pertinent art in the context in which it is used. A
functional limitation is often used in association with an element,
ingredient, or step of a process to define a particular capability or
purpose that is served by the recited element, ingredient or step.

All of the language objected to by the Examiner defines a functional action of the
element recited in the claim. Applicant submits that the language rejected by the Examiner
would fairly convey the metes and bounds of the invention as defined in the claims to a person
of ordinary skill in the pertinent art in the context for which it is used. Applicant submits that
the public is informed of the boundaries of what constitutes infringement of the patent by the
language using the claims as required by §2173 of the M.P.E.P. Applicant notes that claims
including phrases containing the word "adapted" have been held to be definite as they serve to
precisely define present structural attributes of interrelated component parts of the claimed
assembly. *In re Benezia*, 189 U.S.P.Q. 149 (C.C.P.A. 1976) (phrase "members adapted to be
positioned" held to be definite); M.P.E.P. §2173.05(g). Accordingly, Applicant respectfully
submits that the language rejected by the Examiner is definite.

All pending claims 1-62 are believed to be in condition for allowance and a Notice of
Allowability is therefore earnestly solicited.

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Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned "Version With Markings to Show Changes Made."

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Specification:

The paragraph beginning on page 3, line 26 has been amended as follows.

The reference number 10 (Fig. 1) generally designates a dough divider with pressure relief embodying the present invention. The illustrated dough divider 10 is shown in Fig. 1 with a shell 11 (see Fig. 2) removed. The dough divider 10 includes a hopper 12 with a lid 14, a latch assembly 20 and a press plate 16. The lid 14 has an open position (see Fig. 1) and a closed position (see Fig. 2). The latch assembly 20 is adapted to maintain the lid 14 in the closed position when activated and to discontinue maintaining the lid 14 in the closed position when deactivated. The press plate 16 is vertically slidable within the hopper 12, with the hopper 12 being adapted to accept dough (not shown) between the lid 14 and the press plate 16. The press plate 16 is adapted to be driven towards the lid 14 in order to compress the dough between the press plate 16 and the lid 14 within the hopper 12. The latch assembly 20 is automatically activated to maintain the lid 14 in the closed position while the press plate 16 is being driven towards the lid 14. The latch assembly 20 also is automatically deactivated to discontinue maintaining the lid 14 in the closed position after the dough has been compressed and divided within the hopper 12. The illustrated dough divider 10 also includes a knife assembly 64 adapted to move towards the lid 14 in order to divide the dough. The illustrated dough divider 10 further includes a pressure relief system including a reversible cylinder assembly 18 [(Fig. 5)] (Fig. 8). The reversible cylinder assembly 18 is connected to the press plate 16 and adapted to move downward in order to allow the press plate 16 to move towards a bottom 22 of the hopper 12 when pressure applied to a top 24 of the press plate 16 from the dough when the hopper 12 reaches a predetermined level.

The paragraph beginning on page 6, line 19 has been amended as follows.

As shown in Fig. 1, the dough divider 10 has a bottom rectangular base plate 44 supported on the casters 32. A motor and pump assembly 46 is mounted or integrally formed on one side of the base plate 44 and a hydraulic oil tank assembly 48 is mounted on another

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side of the base plate 44. The motor and pump assembly 46 is connected to the hydraulic oil tank assembly 48 by a suction line 45 in order to help pump oil from the hydraulic oil tank assembly 48, thereby operating the reversible divider cylinder 18 (Fig. 5). Two front hexagonal lower supports 50 and two back hexagonal lower supports 51 are also connected to the base plate 44, and a cylinder housing 52 is connected to the top of the four lower supports 50 and 51. A middle rectangular plate 54 is attached to the top of the cylinder housing 52. The reversible cylinder assembly 18 is located within the cylinder housing 52 and protrudes through the middle rectangular plate 54. A four-way valve 110 below the cylinder housing 52 is connected to the hydraulic oil tank assembly 48 by a first tube 49 in order to connect the hydraulic oil tank assembly 48 to the reversible cylinder assembly 18. The four-way valve 110 as described in this application is commercially available from Husco International located in Waukesha, Wisconsin, under the parts Inlet Section 5001-A59, Spool Section 5002-A10, Outlet Section 5003-A3, Pilot Oper. Relief 5060-B, Tank Port O-Ring Plug R-771-10, Bolt Kit 6131-1 and Link 52257. Those skilled in the art will appreciate that other similarly functioning valves may be used. The four-way valve 110 is also connected to the motor and pump assembly 46 by a second tube 53 in order to complete a fluid path between the four-way valve 110, the motor and pump assembly 46 and the hydraulic oil tank assembly 48. When the motor and pump assembly 46 is turned on, oil is pumped from the motor and pump assembly 46 through second tube 53 to the four-way valve 110, through the four-way valve [100] 110, to the hydraulic oil tank assembly 48 from the four-way valve 110 through the first tube 49, and from the hydraulic oil tank assembly 48 to the motor and pump assembly 46. As described in more detail below, the oil is diverted through the four-way valve 110 to the reversible cylinder assembly 18 in order to divide the dough into equal portions.

The paragraph beginning on page 7, line 14 has been amended as follows.

The illustrated dough divider 10 also includes the hopper 12 at a top end which is connected to the middle rectangular plate 54 by several upper supports 56. The hopper 12 includes an annular wall 57 with the rectangular flange 28 integral with the top of the annular wall 57. In the illustrated example, seven upper supports 56 with a hexagonal cross-section,

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three in the front of the main housing body 26 and four in the back of the main housing body 26, are located between the middle rectangular plate 54 and the rectangular flange 28 of the hopper 12. The switch housing 36 is attached to a front right upper support 56a and the control valve handle 38 is attached to a front left upper support 56b and the front right upper support 56a. A front central support 56c is located between the front left upper support 56b and the front right upper support 56a. A dough dividing assembly 58 is located between the middle rectangular plate 54 and the hopper 12. As explained in more detail below, the dough dividing assembly 58 compresses the dough and divides the dough into equal portions.

The paragraph beginning on page 9, line 3 has been amended as follows.

The illustrated reversible cylinder 18 includes a housing tube 80 slidably supporting an inner telescoping rod 82 and an outer telescoping rod 86. The inner telescoping rod 82 has a first piston 84 at a bottom end of the inner telescoping rod 82 adjacent a bottom 92 of the housing tube 80. The outer telescoping rod 86 has a second piston 88 at a bottom end of the outer telescoping rod 86 adjacent a top 93 of the housing tube 80. The first piston 84 and the second piston 88 therefore separate the housing tube 80 into a first oil area 94 between the bottom 92 of the housing tube 80 and the first piston 84, a second oil area 96 between the first piston 84 and the second piston 88 and a third oil area 98 between the second piston 88 and the top 93 of the housing tube 80. The first oil area 94 is fluidly connected to the second oil area 96 through a first valve 100 in the first piston 84 and the second oil area 96 is fluidly connected to the third oil area 98 through a second valve 102 in the second piston 88. As described in more detail below, the first oil area 94, the second oil area 96, the third oil area 98, the first valve 100 and the second valve 102 help to operate the knife assembly 64 and the press plate 16. As shown in [Fig. 5] Fig. 8, the inner rod 82 telescopes through the outer rod 86 and protrudes through the top of the housing tube 80 to connect to the stanchion support plate 62. Likewise, the outer rod 86 protrudes through the top of the housing tube 80 and connects to the knife assembly support plate 68. Therefore, the outer rod 86 can telescopingly slide around the inner rod 82 to move the knife assembly 64 relative to the press plate 16.

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The paragraph beginning on page 10, line 3 has been amended as follows.

The operator then lifts control valve handle 38, which is connected to the four-way valve 110 via linkage 104. When the power-on button 34 is pressed, oil is pumped through the second tube 53 into the four-way valve 110 and out the four-way valve 110 into the first tube 49, which is coupled to the hydraulic oil tank 48. When the control valve handle 38 is lifted, the oil passes from the motor and pump assembly 46 into the second tube 53, through the four-way valve and into a third tube 114 connected to the hose 156 and to the first oil area 94. Furthermore, oil from the third oil area 98 will be forced through a port 108 into a fourth tube 116 connected to the four-way valve 110. The oil passing through the fourth tube 116 from the third oil area 98 further passes through the four-way valve 110 and into the hydraulic oil tank 48 through the first tube 49.

In the Abstract:

The abstract has been amended as follows.

A dough divider including a hopper with a lid, [a] latch assembly and [a] press plate. The lid has an open [position] and [a] closed position. The latch assembly is adapted to maintain the lid in the closed position when activated and to discontinue maintaining the lid in the closed position when deactivated. The press plate is vertically slidable within the hopper[;], with the hopper being adapted to accept dough between the lid and the press plate. The press plate is adapted to be driven towards the lid in order to compress the dough between the press plate and the lid within the hopper. The latch assembly is automatically activated to maintain the lid in the closed position while the press plate is being driven towards the lid. The latch assembly is [also] automatically deactivated to discontinue maintaining the lid in the closed position after the dough has been compressed and divided within the hopper.

In the Claims:

Claims 3, 18, 19, 41, 50, 51 and 62 have been amended as follows.

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3. (Twice Amended) The food press of claim 1, wherein:

the press plate has a vertical stroke between a top of the hopper and a bottom of the hopper; and

the press plate is configured to move towards the bottom of the hopper when [the] pressure applied to a top of the press plate from the food within the hopper reaches a predetermined level.

18. (Amended) A food press comprising:

a hopper with a lid, the lid having an open position and a closed position;

a latch assembly adapted to maintain the lid in the closed position when activated and to discontinue maintaining the lid in the closed position when deactivated;

a press plate vertically slidable within the hopper;

the hopper being adapted to accept food between the lid and the press plate;

the press plate adapted to be driven towards the lid in order to compress the food between the press plate and the lid within the hopper;

wherein the latch assembly automatically deactivates to discontinue maintaining the lid in the closed position after the food has been compressed [and divided] within the hopper.

19. (Twice Amended) The food press of claim 18, wherein:

the press plate has a vertical stroke between a top of the hopper and a bottom of the hopper; and

the press plate is configured to move towards the bottom of the hopper when [the] pressure applied to a top of the press plate from the food when the hopper reaches a predetermined level.

41. (Amended) The food press of claim 39, wherein:

the press plate has a vertical stroke between a top of the hopper and a bottom of the hopper; and

the press plate is configured to move towards the bottom of the hopper when [the]

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pressure applied to a top of the press plate from the food within the hopper reaches a predetermined level.

50. (Amended) A food press comprising:

a hopper with a lid, the lid having an open position and a closed position;

a closure mechanism comprising a first member on the lid and a second member on the hopper configured to interact to maintain the lid in the closed position when the closure mechanism is activated and to discontinue maintaining the lid in the closed position when the closure mechanism is deactivated;

a press plate vertically slidable within the hopper;

the hopper being adapted to accept food between the lid and the press plate;

the press plate adapted to be driven towards the lid in order to compress the food between the press plate and the lid within the hopper;

wherein the closure mechanism automatically deactivates to discontinue maintaining the lid in the closed position after the food has been compressed [and divided] within the hopper.

51. (Amended) The food press of claim 50, wherein:

the press plate has a vertical stroke between a top of the hopper and a bottom of the hopper; and

the press plate is configured to move towards the bottom of the hopper when [the] pressure applied to a top of the press plate from the dough when the hopper reaches a predetermined level.

62. (Amended) A food press comprising:

a hopper with a lid, the lid having an open position and a closed position;

means for maintaining the lid in the closed position when the means for maintaining is activated and to discontinue maintaining the lid in the closed position when the means for maintaining is deactivated;

a press plate vertically slidable within the hopper;

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the hopper being adapted to accept [dough] food between the lid and the press plate;
the press plate adapted to be driven towards the lid in order to compress the food
between the press plate and the lid within the hopper;

wherein the means for maintaining automatically deactivates to discontinue maintaining
the lid in the closed position after the food has been compressed [and divided] within the
hopper.

TRADEMARK

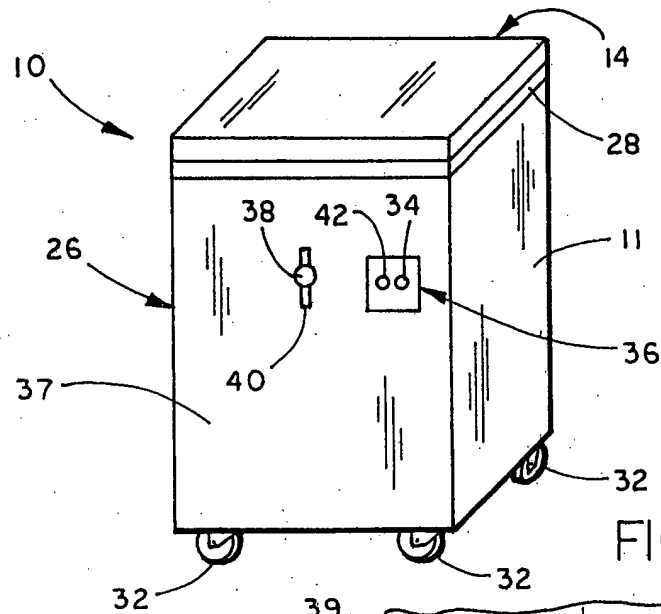


FIG. 2

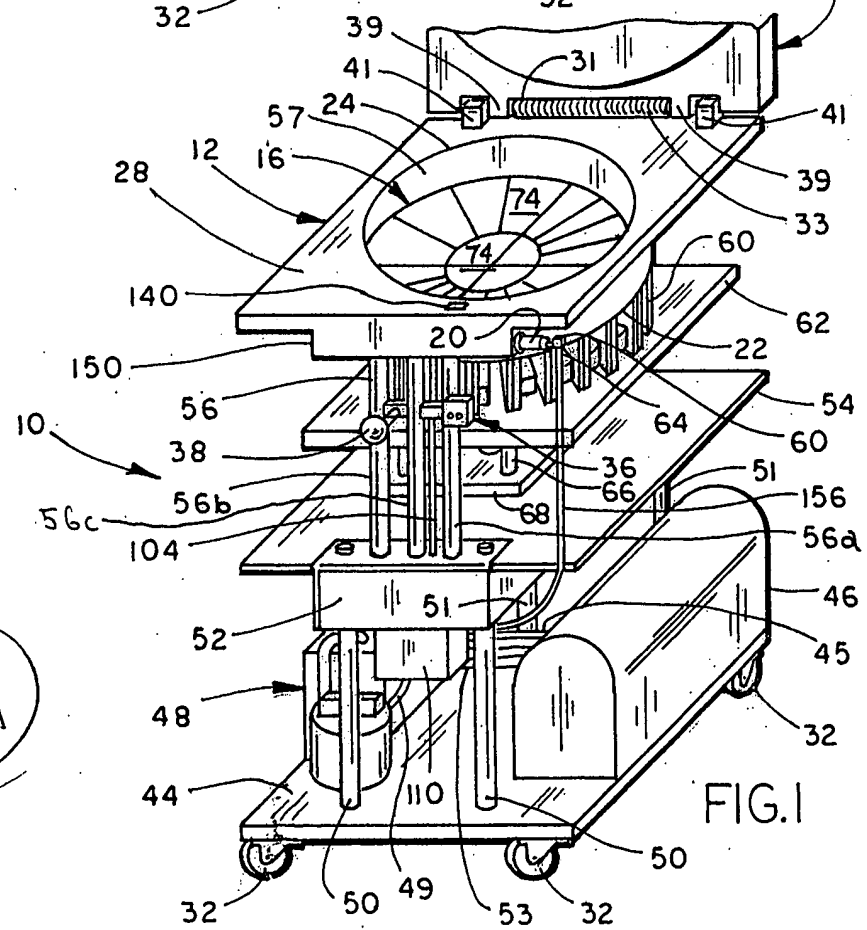


FIG. 1

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